

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

MARCOS ORTIZ, #1049113

§

VS.

§

CIVIL ACTION NO. 6:05cv233

DOUGLAS DRETKE, ET AL.

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(g). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit.

The Fifth Circuit discussed the Plaintiff's history of frivolous litigation and imposed a bar pursuant to 28 U.S.C. § 1915(g) in *Ortiz v. Brown*, No. 04-40456 (5th Cir. Aug. 18, 2004). He may not file any new lawsuits or appeals *in forma pauperis* unless he is under imminent danger of serious physical injury. The Plaintiff's complaint is about an attack by gang members that occurred a year ago at the Darrington Unit. He was subsequently transferred to the Powledge Unit. He then filed the present lawsuit on June 23, 2005. He has not shown that he is under imminent danger of serious physical injury. His claim that he may be attacked again at his new unit is speculative, particularly

since his new unit houses relatively lower level security inmates than his previous unit. The Plaintiff has not shown that the exception to § 1915(g) is applicable. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the cause of action is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that the Plaintiff's *in forma pauperis* status is **REVOKED**. The Plaintiff may resume his lawsuit if he pays the entire filing fee of \$250 within thirty days from the entry of this Order. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 25th day of July, 2005.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE